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AGREED BOARD ORDER #91-11-001

RE: IN THE MATTER OF  
OSCAR T. NEW, D.P.M.,  
License No. 330

BEFORE THE TEXAS STATE  
BOARD OF PODIATRY  
EXAMINERS

On this day came on to be considered by the Texas State Board of Podiatry Examiners the matter of Oscar T. New, Respondent, 25 Highland Park Village, Suite 207, Dallas, Texas 75205-2795.

By letters dated June 8, 1990, and September 11, 1990, the Texas State Board of Podiatry Examiners gave preliminary notice to Dr. New of its intent to investigate three patient complaints against him. These complaints alleged that Respondent may have violated Board Rules §375.2, "General," §375.3, "Advertising", §375.4, "Soliciting", §375.10, "Fees", §375.11, "Records," and §375.12, "Violations." No formal complaint has been filed against Respondent by the Texas State Board of Podiatry Examiners.

I.

[REDACTED]

Mrs. [REDACTED] alleged that Dr. New misrepresented both the cost and nature of the surgery he performed, and that Dr. New's assistant had informed Mrs. [REDACTED] upon initial consultation that the cost for each stage of the surgery would be approximately \$1,800. She further claimed that Dr. New submitted a claim to Mrs. [REDACTED] insurer which reflected a charge of \$8,000 per procedure. Further, the claim did not indicate that Mrs. [REDACTED] had already paid over \$1,600 toward the bill. Mrs. [REDACTED] alleged further that she was not told that her first and fifth metatarsals would effectively be broken during surgery. Mrs. [REDACTED]



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also alleged that she now suffers from foot pain which has had a markedly limiting effect upon her lifestyle. Dr. New denies all of these allegations and has cooperated with the Board and presented information in rebuttal.

II.

[REDACTED]

Mrs. [REDACTED] alleged that Dr. New was negligent in the care he provided in that 1) his examination and diagnostic procedures were inadequate; 2) he recommended unnecessary surgery; 3) he exaggerated and/or misrepresented the advantages of the procedure he used; 4) he misdiagnosed Mrs. [REDACTED] conditions in several respects; 5) he failed to obtain Mrs. [REDACTED] informed consent to surgery; 6) he failed to employ proper techniques and procedures during the surgery itself; and 7) he failed to provide adequate post-operative, follow-up care. Dr. New denies all of these allegations and has cooperated with the Board and presented information in rebuttal.

III.

[REDACTED]

Mrs. [REDACTED] alleged the care provided by Dr. New was inadequate in that 1) he misrepresented the nature of the surgery he performed; 2) he did not inform Mrs. [REDACTED] of the risks attendant to that surgery; 3) the procedure used by Respondent left Mrs. [REDACTED] with a bad limp and considerable pain; 4) no follow-up care was provided, and 5) Mrs. [REDACTED] required additional surgery to repair the damage done by Dr. New. Mrs.



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██████ also alleged that the fee charge by Dr. New was far beyond the customary range for the type of surgery performed. Dr. New denies all of these allegations and has cooperated with the Board and presented information in rebuttal.

An informal conference was held between the parties on July 24, 1990, and September 18, 1990, with Dr. New and Michael R. Sharp, Legal Counsel for Respondent, and the following representatives of the Texas State Board of Podiatry Examiners in attendance. Brooks Wm. (Bill) Conover, III, Assistant Attorney General, Sandra A. Weber, Assistant Attorney General, Don E. Branson, Executive Director and Jerry W. Patterson, D.P.M., also attended the conferences at the Board's request as their consultant.

By his appearance at the informal conference and by his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. New does hereby waive right to Notice of Hearing, hearing before the Texas State Board of Podiatry Examiners, and judicial review of this Order.

After discussion of the matters previously outlined in this Order, and subsequent communications, the Board and Dr. New, in order to avoid the expense, delay and uncertainty of hearing, have agreed to the entry of an order dispensing with the need for further action in this matter.

It is hereby agreed between the parties, Dr. O Theodore New and the Board, that Respondent's license shall be suspended for 1 (one) year beginning February 22, 1991, with all such suspension probated except for the first 30 (thirty) days provided that Dr. New complies with the following conditions:

1. Dr. New shall review and initial each surgical consent form and check its



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accuracy prior to the performance of surgery. The nomenclature to describe conditions and surgical procedures must be those commonly used to describe these procedures as set forth in the ICD: 9 Diagnosis Coding and CPT: 9 Procedure Coding Manuals;

2. Prior to the performance of any surgical procedure, Dr. New shall review with his patients, in detail, the total cost of the surgery, including a statement that his fees may be higher than others in his geographical area, and may not be covered by the normal 80% insurance coverage. The patient must also be given an opportunity to check with their insurance company, prior to the performance of the surgery, to verify their coverage of these procedures;
3. Dr. New shall explain, in detail, the morbidity of his surgical procedures, including the fact that bone takes 4-6 weeks to heal, primarily, and as much as 9 to 12 months for complete healing. He must include a statement to the effect that surgery performed by minimal incision heals to completion no faster than surgery performed in an open fashion;
4. An on site examination of Dr. New's surgical suite shall be performed by William Bradbury, D.P.M., who is Board Certified by the American Board of Podiatric Surgery and the American Board of Ambulatory Foot Surgery who is a Texas licensee and who practices in Houston, Texas. Dr. Bradbury's evaluation will be at the expense of Dr. New and must include a review of sterilization procedures of instruments, supplies, and surgical prepping techniques, as well as the overall suitability of the suite to be a place where bone surgery can be performed. Dr. New shall use his best reasonable efforts to implement the recommendations of the consultant.
5. Dr. New shall perform 60 hours of continuing education in each of the three (3) consecutive years following entry of this order. These hours must be accomplished by the attendance of seminars approved by The Council of Education of the American Podiatry Medical Association. The programs selected shall include the basic evaluation of patients planning to have surgical correction of forefoot abnormalities, both clinically and radiographically. Some programs must deal with evaluation, determination, and treatment of infections. No seminars will count for credit that deal with minimal incision surgical techniques.
6. Dr. New's surgical narratives must indicate differences of techniques between patients. When multiple procedures are performed, they must be in sequential, rather than in separate reports.
7. Dr. New's medical records shall include pre-operative evaluation of circulation



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and other pertinent information concerning the patient being a good surgical risk for elective foot surgery. Evaluation of range of motion of joints, pre-operatively, and measurement of degree of osseous deformities are required.

8. Dr. New shall not knowingly perform elective, reconstructive bone surgery with the presence of a known systemic or local infectious process.
9. that during the 30 day suspension period, Dr. New shall not perform any tasks or duties which require a license from the Board;
10. that during the one (1) year period of suspension and probation, Dr. New will submit quarterly reports to the Board detailing his compliance with the conditions of probation;
11. that during the one (1) year period of suspension and probation, Dr. New will obey and abide by all laws of the Board; and
12. Dr. New agrees that a serious violation of this Order within the one year period of suspension and probation may result in a hearing and that hearing may result in revocation of the probation and the imposition of the remaining portion of the suspension or other disciplinary action. The Board represents that there are no informal or formal complaints pending or in its files that it deems potentially violative of this probation.

#### ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, License No. 330, issued to Dr. O. T. New and is suspended for a period of one (1) year from February 22, 1991, with all such suspension probated except for thirty (30) days, provided that Dr. New complies with the following conditions:

1. Dr. New shall review and initial each surgical consent form and check its accuracy prior to the performance of surgery. The nomenclature to describe conditions and surgical procedures must be those commonly used to describe these procedures as set forth in the ICD: 9 Diagnosis Coding and CPT: 9 Procedure Coding Manuals;
2. Prior to the performance of any surgical procedure, Dr. New shall review with his patients, in detail, the total cost of the surgery, including a statement



that his fees may be higher than others in his geographical area, and may not be covered by the normal 80% insurance coverage. The patient must also be given an opportunity to check with their insurance company, prior to the performance of the surgery, to verify their coverage of these procedures;

3. Dr. New shall explain, in detail, the morbidity of his surgical procedures, including the fact that bone takes 4-6 weeks to heal, primarily, and as much as 9 to 12 months for complete healing. He must include a statement to the effect that surgery performed by minimal incision heals to completion no faster than surgery performed in an open fashion;
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5. Dr. New shall perform 60 hours of continuing education in each of the three (3) consecutive years following entry of this order. These hours must be accomplished by the attendance of seminars approved by The Council of Education of the American Podiatry Medical Association. The programs selected shall include the basic evaluation of patients planning to have surgical correction of forefoot abnormalities, both clinically and radiographically. Some programs must deal with evaluation, determination, and treatment of infections. No seminars will count for credit that deal with minimal incision surgical techniques.
6. Dr. New's surgical narratives must indicate differences of techniques between patients. When multiple procedures are performed, they must be in sequential, rather than in separate reports.
7. Dr. New's medical records shall include pre-operative evaluation of circulation and other pertinent information concerning the patient being a good surgical risk for elective foot surgery. Evaluation of range of motion of joints, pre-operatively, and measurement of degree of osseous deformities, are required.
8. Dr. New shall not knowingly perform elective, reconstructive bone surgery with the presence of a known systemic or local infectious process.

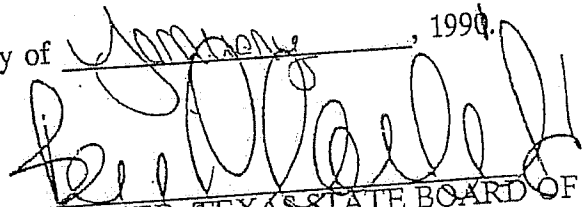


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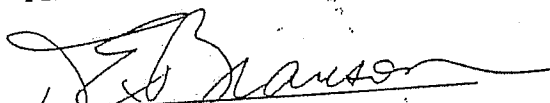
9. that during the 30 day suspension period, Dr. New shall not perform any tasks or duties which require a license from the Board;
10. that during the one (1) year period of suspension and probation, Dr. New will submit quarterly reports to the Board detailing his compliance with the conditions of probation;
11. that during the one (1) year period this Order of suspension and probation, Dr. New will obey and abide by all laws of the Board; and
12. Dr. New agrees that a serious violation of this Order within the one year period of suspension and probation may result in a hearing and that hearing may result in revocation of the probation and the imposition of the remaining portion of the suspension or other disciplinary action. The Board represents that there are no informal or formal complaints pending or in its files that it deems potentially violative of this probation.

And it is so ordered.

SIGNED AND DATED THIS 17 day of January, 1990.

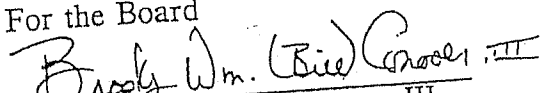
  
MEMBER, TEXAS STATE BOARD OF  
PODIATRY EXAMINERS

ATTEST:

  
Don E. Branson,  
Executive Director  
Texas State Board of Podiatry  
Examiners

APPROVED AS TO FORM AND AGREED TO:

For the Board

  
Brooks Wm. (Bill) Conover, III  
Assistant Attorney General